

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Connect America Fund)	WC Docket No. 10-90

**TRACFONE WIRELESS, INC.’S COMMENTS IN
RESPONSE TO PETITIONS FOR RECONSIDERATION**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby comments in response to petitions for reconsideration that were filed regarding the Commission’s Lifeline Modernization Order.¹

INTRODUCTION

These comments focus on two issues raised by petitioners: (1) the importance of maintaining standalone Lifeline voice service as an option so that low-income consumers can meet their communications needs, including access to emergency and other critical services,² and (2) the need for minimum mobile broadband data requirements that will provide low-income

¹ Lifeline and Link Up Reform and Modernization, et al. (Third Report and Order, Further Report and Order, and Order on Reconsideration), 31 FCC Rcd 3962 (2016) (“Lifeline Modernization Order”).

² See Joint Lifeline ETC Petitioners’ Petition for Partial Reconsideration and Clarification (“Joint Lifeline ETC Petition”); National Association of State Utility Consumer Advocates’ Petition for Reconsideration (“NASUCA Petition”); Petition for Reconsideration/Clarification of NTCA - The Rural Broadband Association and WTA - Advocates for Rural Broadband (“NTCA Petition”).

consumers with affordable Internet access.³ As urged by TracFone in its Petition for Reconsideration, the Commission should reconsider rules that will preclude low-income consumers from choosing services that best meet their communications needs, especially emergency and critical communications needs, (such as the rule requiring the phase out of Lifeline-supported standalone voice service), and rules that create obstacles to reaching the Commission's goal of expanding low-income consumers' access to broadband service (such as the rule setting minimum mobile data allowances at levels that would make Lifeline-supported broadband service unaffordable to millions of Lifeline-eligible low-income households). Absent reconsideration of the rules discussed in these Comments, many low-income households will lose access to Lifeline-supported voice services that serve important public safety purposes and may lose access to Lifeline-supported communications services altogether because they will not be able to afford to purchase Lifeline services that meet the standards mandated by the Commission. As a result, a fundamental principle of the Lifeline program -- ensuring the availability of quality services at just, reasonable, **and affordable** rates -- will be undermined.⁴

I. The Commission Should Not Eliminate or Reduce Lifeline Support for Standalone Voice Service Because Low-Income Households Rely on Voice Service for Access to Emergency and Other Essential Services.

TracFone has asked the Commission to reconsider the phased elimination of Lifeline-supported standalone voice service for several reasons, including: (1) many existing Lifeline households rely on the availability of affordable voice telephone service to meet their communications needs, including the need to reach emergency and other critical services, and such households may not want or perceive a need for broadband Internet access; and (2) there is

³ See CTIA's Petition for Reconsideration ("CTIA Petition"); Joint Lifeline ETC Petition.

⁴ See 47 U.S.C. § 254(b)(1) (setting forth universal service principles which include: "[q]uality services should be available at just, reasonable, and affordable rates.").

no evidence that broadband and free Voice over Internet Protocol (“VoIP”) options provide reliable access to emergency services that are essential to public safety, such as 911, or to critical services that rely on N11 numbers, nor is there evidence that such capabilities will exist by 2021 – the scheduled date for abolition of voice-only Lifeline service.

Other petitioners have demonstrated why the elimination of Lifeline-supported standalone voice service should be reconsidered. TracFone agrees with NTCA’s conclusion that “a reliable and affordable voice service is and will remain critical for the majority of consumers for the foreseeable future, particularly with respect to public safety.”⁵ As stated by NTCA, the Commission claims that “low-income consumers should have access to the same public safety features as all Americans,” but then establishes rules that put low-income consumers’ access to public safety features in jeopardy.⁶ By mandating the elimination of Lifeline-supported standalone voice service, millions of low-income households who rely on access to voice service under the Lifeline program will be forced to purchase a mobile broadband service and bundle it with a voice service in order to obtain any Lifeline support for their voice telephone service. A low-income consumer may not want or need the broadband portion of the bundled service, may not know how to operate the combined services, and more importantly, may not be able to afford the higher price of that bundled service even with a Lifeline discount.⁷ As a result, low-income consumers, especially those consumers who currently receive no charge service from wireless Lifeline providers, may be forced to forgo Lifeline-supported service and the reliable access to emergency and critical communications services that is a significant benefit of that service. As

⁵ NTCA Petition, at 7.

⁶ *Id.* at 7-8 (quoting Lifeline Modernization Order, ¶ 40 n.93).

⁷ *See id.*; *see also* NASUCA Petition, at 4 (for low-income customers “the difference in cost between stand-alone voice service and a bundle may be the difference between having voice service and not having voice service.”).

NASUCA correctly states, “customers of these wireless Lifeline carriers will be at risk of losing service entirely if required to move to a bundle.”⁸

NTCA points out that the Commission’s action is “perplexing” in light of the Commission’s recent adoption of rules that require facilities-based, fixed, voice residential service that is not line powered, to offer subscribers the option of purchasing a backup power solution to provide continued access to 911 (initially for 8 hours) in the event of a commercial power outage.⁹ In promulgating the backup power rules, the Commission referenced “the vital importance of the continuity of 911 communications, and the Commission’s duty to promote ‘safety of life and property through the use of wire and radio communication’”¹⁰ That same statutory duty to promote the “safety of life and property” by adopting back up power rules to ensure continuous access to 911 should similarly motivate the Commission to ensure that low-income households not lose their access to continuous availability of emergency services due to economic reasons.

The Commission has a long history of using its authority to promote public safety by ensuring reliable and direct access to 911 services. For example, in 2014, Commissioner Ajit Pai initiated an inquiry in response to a tragic situation in which a nine year old girl was unable to access 911 from a hotel room to assist her mother who was being attacked by her estranged husband and who died as a result of the attack. Although the young girl attempted to call 911

⁸ NASUCA Petition, at 4. TracFone is aware of some fixed broadband-only services that could be provided to Lifeline-eligible consumers at no charge, but none of these fixed broadband-only services support 911 and N11 services. If low-income consumers who cannot afford to pay for communications services are forced to choose between subsidized broadband service and voice service and they chose a fixed broadband service that does not offer 911 access, then they will be giving up their only means of 911 access.

⁹ *Id.* at 7 (citing Ensuring Customer Premises Equipment Backup Power for Continuity of Communications (*Report and Order*), 30 FCC Rcd 8677 (2015) (“Backup Power Order”)).

¹⁰ Backup Power Order, ¶ 3 (quoting 47 U.S.C. § 151).

four times, the call did not connect to a public safety answering point because the hotel's phone system required callers to dial 9 to get an outside line.¹¹ Commissioner Pai's inquiry focused on the ability of guests at schools, hotels, and office buildings to reach emergency responders while using a multiline telephone system. The results of that inquiry and Commissioner Pai's continued stewardship of this important public safety issue were pivotal in getting industries that rely on multiline telephone systems, as well as multiline telephone system vendors, to make changes to guarantee the availability of direct 911 dialing.¹² Commissioner Pai's focus on this issue was also instrumental in getting Congress to introduce a bill that would amend the Communications Act to prohibit businesses from manufacturing, importing, selling or leasing a multi-line telephone system unless it is pre-configured to allow users to directly initiate a call to 9-1-1 (without dialing any additional digit).¹³ Commissioner Pai deserves commendation for his championing role on that important 911 access-public safety issue. For the same important public safety reasons that all persons should be able to dial 911 easily and conveniently from any location, so too should all low-income persons have the ability to obtain Lifeline-supported voice service which ensures that they will be able to use that service to access 911 in emergency situations.

¹¹ See Statement of FCC Commissioner Ajit Pai on the Importance of Connecting Americans to Emergency Personnel Whenever They Dial 911, January 13, 2014.

¹² See Statement of FCC Commissioner Ajit Pai Regarding the Ongoing Inquiry into Consumers' Ability to Reach Emergency personnel Whenever They Dial 911, June 24, 2014.

¹³ See H.R.4167 – Kari's Law Act of 2016. The bill was passed by the House of Representatives on May 23, 2016 and awaits a vote by the Senate.

The Commission has also adopted important rules that address the need for all individuals to be able to access 911 services.¹⁴ In addition, the Commission normally considers the effect that new rules will have on access to 911 services. Most recently, when the Commission adopted rules governing telephone companies' transitions from traditional TDM technology used to provide landline service to Internet Protocol technology, it required companies wishing to discontinue their legacy networks on an expedited basis to meet a three-pronged test.¹⁵ The test "recognizes that while many consumers have welcomed new services, legacy technologies remain relevant for others," and permits expedited transitions only when (1) network performance is substantially unchanged for customers; (2) access to 911, cybersecurity and access for people with disabilities meets current rules and standards; and (3) compatibility with a list of popular legacy services is assured.¹⁶ Thus, in promulgating rules that would allow companies to discontinue the use of traditional voice technology, the Commission was mindful of the effect of that discontinuance on consumers, **including their ability to access 911**. In contrast, when deciding to eliminate Lifeline-supported voice service, the Commission failed to consider whether low-income consumers would continue to have affordable and reliable access to 911 services or to other critical services reached via N11 numbers. These issues must be examined before terminating Lifeline-supported voice service. Given the Commission's longstanding commitment to the availability of reliable 911 and other public safety services, its decision to abolish voice-only Lifeline service (a decision which will deprive millions of low-

¹⁴ See, e.g., Wireless E911 Location Accuracy Requirements (*Fourth Report and Order*), 30 FCC Rcd 1259 (2015) (adopting E911 location accuracy rules to improve indoor and outdoor location determination).

¹⁵ See Technology Transitions (*Declaratory Ruling, Second Report and Order, and Order on Reconsideration*), GN Docket No. 13-5 *et al.*, FCC 16-90 (July 15, 2016).

¹⁶ See *id.*; see also FCC Streamlines Approval Process for Network Technology Transitions, July 14, 2016.

income households of access to 911service) is unexplained and unexplainable, and compels reconsideration.

TracFone agrees with the Joint Lifeline ETC Petitioners that the Commission should delay any phase down of Lifeline support for wireless voice services until the Commission has completed its review of the State of the Lifeline Marketplace Report (“Marketplace Report”) to be submitted by the Wireline Competition Bureau by June 30, 2021.¹⁷ Like the Joint Lifeline ETC Petitioners, TracFone is concerned that the Commission disregarded information in the record demonstrating that voice service costs are not likely to decline significantly and that low-income consumers value voice service.¹⁸ TracFone urges the Commission to maintain Lifeline support for voice services at a level that will ensure that voice services remain available at affordable prices to all Lifeline-eligible households who want and perceive a need for those services.

Finally, as TracFone explained in its Petition for Reconsideration, the elimination of Lifeline-supported voice services should be delayed for another reason: the Commission has not determined based on a factual record that consumers using broadband services as their sole means of voice and text communications will have ubiquitous and reliable access to E911, NG911 and other emergency and critical N11 services. Until broadband services can be used to provide reliable and user-friendly options for emergency 911 and other critical N11 services, the Commission should not eliminate voice service (which provides access to essential 911 and N11 services) as a Lifeline-supported service.

¹⁷ See Joint Lifeline ETC Petition, at 9-10. As an alternative, the Joint Lifeline ETC Petitioners suggest advancing the due date of the Marketplace Report to June 30, 2019. *Id.* at 10. TracFone also asked the Commission to advance the date for completion of the Marketplace Report.

¹⁸ See *id.* at 10-11.

Given the Commission's statutory duty to promote "safety of life and property"¹⁹ as well as its longstanding policy of ensuring that 911 services can be reliably and effectively accessed by all individuals at all times no matter their location or the technology of the phone system they are using, the Commission should recognize the impact that losing access to Lifeline-supported voice service would have on those low-income consumers who would be unable to afford voice service (that provides access to 911 services) when bundled with broadband service and reconsider elimination of Lifeline-supported standalone voice service.²⁰

II. The Commission Should Ensure that Any Minimum Mobile Broadband Data Requirements Will Provide Affordable Internet Access to Low-Income Consumers.

TracFone, in its Petition for Reconsideration, strongly urged the Commission to reconsider the minimum service standards for mobile broadband, particularly the formula for adjusting those standards after December 1, 2019. While mandatory minimum data amounts should provide low-income households with sufficient, functional, reliable, and secure access to the Internet, requiring data amounts that are greater than necessary to fully meet the needs of low-income consumers will deny affordable access Internet access to Lifeline-eligible consumers, thereby impeding broadband adoption by low-income households.

¹⁹ 47 U.S.C. § 151.

²⁰ Similarly, the Commission failed to consider the effect on consumers when it reduced the 60 day non-usage period to 30 days. As explained in TracFone's Petition for Reconsideration at page 24, reducing the non-usage period will be burdensome to low-income consumers who rely on the service, but who are de-enrolled because they do not use the service for a brief period either due to travel or illness or because they only use the service for critical or important calls. In TracFone's experience, a significant percentage of those customers who are de-enrolled for non-usage will re-enroll the following month, and with a shortened non-usage period that percentage will substantially increase. Re-enrollment is an added hardship for low-income consumers who must go through the Lifeline application process again, including providing proof of eligibility and experience disruption of service until their re-enrollment application is approved and their service restored.

TracFone agrees with CTIA and the Joint Lifeline ETC Petitioners that the primary flaw with the Commission's minimum service standard for mobile broadband is the Commission's failure to analyze whether the standard would result in affordable rates.²¹ As noted by CTIA, affordability is a core statutory principle of universal service that must be considered when determining Lifeline service standards.²² Although the Commission acknowledged that it should not mandate "prohibitively expensive offerings," it did not undertake a thorough examination of the actual costs for broadband service at various data amounts.²³ As such, TracFone supports CTIA's recommendation that the Commission seek public input to develop a record upon which an affordable service standard could be based that would provide low-income households with reasonably affordable and sufficient broadband Internet access.²⁴

CTIA also correctly points out that the Commission's long-term formula for calculating the minimum standard for mobile broadband service at 70 percent of the average per-household data usage rate is not supported by any evidence in the record of this proceeding. A required minimum data usage allowance based on that formula would not be conducive to offering broadband service at no charge. The resulting prices, even with a Lifeline subsidy, would be unaffordable to many low-income households.²⁵ Moreover, as the Joint Lifeline ETC Petitioners note, the formula unfairly burdens households with fewer than the average number of mobile

²¹ See CTIA Petition, at 3; Joint Lifeline ETC Petition, at 5.

²² *Id.* (quoting 47 U.S.C. § 254(b)(1)); see also Joint Lifeline ETC Petition, at 5 ("The principal flaw with this framework is that it is inconsistent with the core Lifeline program goal of promoting affordability.")

²³ See *id.* at 4 (quoting Lifeline Modernization Order, ¶ 71).

²⁴ See *id.*

²⁵ See *id.* at 5-6; see also Joint Lifeline ETC Petition, at 6. CTIA's petition for reconsideration also cites to various discrepancies in Lifeline Modernization Order and the rules related to the formula used to calculate the long-term Lifeline mobile broadband usage standard. *Id.* at 7-8. TracFone agrees that the Commission should modify the order and rules to address these discrepancies.

subscriptions by requiring them to purchase more data than they need and more than they can afford – a requirement based on usage averages of larger households which have many more broadband devices.²⁶ There is no logical reason for requiring a retired person living alone on a limited fixed income who wants to take advantage of the Lifeline subsidy to obtain voice services to purchase a mobile broadband plan that provides 70 percent of the average data that a family of four or more uses and then have to rely on a VoIP application for voice services that may not include access to essential 911 and N11 services. While TracFone does not take any position regarding the alternative formula proposed by the Joint Lifeline ETC Petitioners, for the reasons stated in its petition for reconsideration, the Commission must revise the formula to ensure the availability of affordable mobile broadband Lifeline service that meets low-income consumers' need for reliable and sufficient access to the Internet.

CONCLUSION

For the reasons set forth in these Comments in Response to Petitions for Reconsideration, TracFone respectfully urges the Commission to reconsider several aspects of its Lifeline Modernization Order consistent with the views expressed herein.

Respectfully submitted,

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²⁶ See Joint Lifeline ETC Petition, at 6.